HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.15571 OF 2006

Between:

M/s. Sunrise Cooperative Housing Society Ltd.,
1-10-83, Ashok Nagar, Hyderabad – 500 020,
rep., by its President, Sri D. Krishna Mohan Rao,
aged about 86 years and another

…Petitioners

AND

K.V. Subrahmanyam and another

...Respondents

: O R D E R :

Counsel for the petitioners : Shri Sanka Ramakrishna Rao
Counsel for respondent No. 1 : Shri P. Sri Raghuram

18th January, 2007

Per G.S.SINGHVI, CJ

This petition is directed against order dated 21-04-2006 passed by the Andhra Pradesh State Consumer Disputes Redressal Commission (for short, 'the State Commission') in F.A No. 624 of 2004, whereby it allowed the appeal preferred by respondent No. 1 – Shri K.V. Subrahmanyam (hereinafter referred to as 'the complainant') against the order of District Consumer Disputes Redressal Forum-II, Hyderabad (for short, 'the District Forum') and directed the opposite parties i.e. the petitioners herein to handover the flat to Shri K.S.R. Prasad Rao, G.P.A holder of the complainant within a period of four weeks and also imposed costs of Rs.2,000/-.

A perusal of the record shows that the complainant filed a petition under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act') by alleging that he became member of opposite party No.1 (petitioner No.1 herein) on 28-1-1987 in place of Shri Y. Subba Rao; that opposite party No.1 disputed his membership, but the same was recognised by Deputy Registrar, Cooperative Societies (Housing) vide his order dated 2-1-1992; that in 1992, he applied for allotment of flat, but his request was not accepted on the ground of non-fulfilment of the new norms; that he filed application before the Cooperative Tribunal, Andhra Pradesh (hereinafter referred to as, 'the Tribunal'), which was allowed by the Tribunal, but despite the direction given by the Tribunal, he was not given the flat. By an order dated 6-4-2004, the District Forum dismissed the complaint. Paragraphs 4, 5 and 6 of the order of the District Forum read as under:

> "4. The complaint was registered by this Forum in the year 1999 only after the complainant endorsed in the complaint that his complaint against OP-1 is not pressed. Thereafter, the complainant filed I.A.No.92/2002 to implead the same party i.e. opposite party No.1. The I.A was dismissed by this Forum on 20-2-2003 along with exemplary costs of Rs.500/- on the complainant/petitioner.

5. The complainant failed to pay this amount. Thereafter, the complainant did not choose to appear before this Forum i.e. even at the time of hearing. Further, from the allegations raised in the complaint and the documents filed by the complainant, we note that the petitioner has already approached the Co-operative Tribunal for the same reliefs for which he has appeared before this Forum. Even the Revision Petition filed by the complainant in RP No.4/96 in CTA 165/95 before the Co-operative Tribunal was dismissed as the complainant has failed to file any evidence before the said Tribunal.

6. Therefore, we hold that the complainant cannot once again appear before the Forum for the same reliefs, which were already decided by the other Tribunal. Further, we note that it is the complainant who failed to act as per the order of the Co-operative Tribunal and also as per the order in I.A.92/2002 given by this Forum. The complainant failed to prove the deficiency in service rendered by the opposite parties."

On appeal, the State Commission not only reversed the finding recorded by the District Forum on the issue of maintainability of the complaint, but also directed petitioner No.1 to allot flat to the complainant's G.P.A. in terms of letter dated 4-3-1997. Two paragraphs of the order of the State Commission, which contain the sum and substance of the reasons and direction given by it, read as under:

"We have gone through the entire record. The complainant's relief cannot be negatived on the ground that he approached the Co-operative Tribunal under the A.P. Co-operative Societies Act. Sec.3 of the Consumer Protection Act, 1986 makes it very clear that "the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

Taking into consideration this legal aspect, this appeal is allowed and we direct the second opposite party/second respondent herein to hand over the flat as per the letter dated 4-3-1997. Mr.K.S.R.Prasad Rao, the G.P.A.holder, representing the complainant submits that there are no dues to the second opposite party. Recording his submission, we direct the second opposite party to hand over the possession

of the flat within a period of four weeks from the date of receipt of the order together with costs of Rs.2,000/-."

Shri S. Ramakrishna Rao, learned counsel for the petitioners assailed the order of the State Commission on various grounds including the one that the same is totally devoid of reasons and does not satisfy the requirement of a speaking order. He submitted that even if the State Commission's view on the maintainability of the complaint filed by respondent No.1 is treated as correct, the direction given by it for handing over the flat to the GPA holder of the complainant is legally unsustainable because there is no finding of deficiency of service and no reason whatsoever has been assigned for allowing the complaint.

Learned counsel for respondent No.1 fairly conceded that the order under challenge does not contain reasons for reversing the order passed by the District Forum.

In view of the above, the writ petition is allowed. The impugned order is set aside and the State Commission is directed to hear F.A.No.624 of 2004 afresh and decide the same by passing a speaking order.

As a sequel to disposal of the main petition, WPMP No.19401 of 2006 filed by the petitioners is disposed of as infructuous.

G.S. SINGHVI, C.J.

January 18, 2007

C.V. NAGARJUNA REDDY, J.

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